

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition :  
of :  
Martin Marietta Corporation : AFFIDAVIT OF MAILING  
for Redetermination of a Deficiency or a Revision :  
of a Determination or a Refund of Corporation :  
Franchise Tax under Article 9A of the Tax Law for :  
the Years 1970 - 1973. :

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State of New York  
County of Albany

Kathy Pfaffenbach, being duly sworn, deposes and says that she is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 24th day of January, 1983, she served the within notice of Decision by certified mail upon Martin Marietta Corporation, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Martin Marietta Corporation  
Attn: Michael J. Quinn  
6801 Rocklodge Dr.  
Bethesda, MD 20034

and by depositing same enclosed in a postpaid properly addressed wrapper in a (post office or official depository) under the exclusive care and custody of the United States Postal Service within the State of New York.

That deponent further says that the said addressee is the petitioner herein and that the address set forth on said wrapper is the last known address of the petitioner.

Sworn to before me this  
24th day of January, 1983.

Kathy Pfaffenbach

James A. Spelund

AUTHORIZED TO ADMINISTER  
OATHS PURSUANT TO TAX LAW  
SECTION 174

STATE OF NEW YORK  
STATE TAX COMMISSION  
ALBANY, NEW YORK 12227

January 24, 1983

Martin Marietta Corporation  
Attn: Michael J. Quinn  
6801 Rocklodge Dr.  
Bethesda, MD 20034

Gentlemen:

Please take notice of the Decision of the State Tax Commission enclosed herewith.

You have now exhausted your right of review at the administrative level. Pursuant to section(s) 1090 of the Tax Law, any proceeding in court to review an adverse decision by the State Tax Commission can only be instituted under Article 78 of the Civil Practice Laws and Rules, and must be commenced in the Supreme Court of the State of New York, Albany County, within 4 months from the date of this notice.

Inquiries concerning the computation of tax due or refund allowed in accordance with this decision may be addressed to:

NYS Dept. Taxation and Finance  
Law Bureau - Litigation Unit  
Albany, New York 12227  
Phone # (518) 457-2070

Very truly yours,

STATE TAX COMMISSION

cc: Petitioner's Representative

Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition	:	
of	:	
MARTIN MARIETTA CORPORATION	:	DECISION
for Redetermination of a Deficiency of Corpora-	:	
tion Franchise Tax under Article 9A of the Tax	:	
Law for the Years 1970 through 1973.	:	

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Petitioner, Martin Marietta Corporation, 6801 Rockledge Drive, Bethesda, Maryland 20817, filed a petition for redetermination of a deficiency of corporation franchise tax under Article 9A of the Tax Law for the years 1970 through 1973 (File No. 28817).

On May 19, 1982, petitioner, by its Assistant Secretary, Arnold Chiet, executed a waiver of formal hearing and thereby consented to submission of this matter to the State Tax Commission. The following decision is rendered upon the file as presently constituted.

#### ISSUE

Whether the property factor of the business allocation percentage used by the Audit Division, based upon the exclusion of inventory from "Property Everywhere" to the extent of progress payments received under government contracts, was correct.

#### FINDINGS OF FACT

1. Petitioner, Martin Marietta Corporation (hereinafter, Martin Marietta), manufactures construction materials and chemicals and is also involved in the aerospace industry. It has plants located throughout the United States. In New York, Martin Marietta, during the tax years at issue, had plants in Haverstraw,

Buffalo and Utica. Its general and administrative offices were located in New York City until 1975 when they were moved to Maryland.

2. Petitioner filed franchise tax returns for the fiscal years ended December 31, 1970, December 31, 1971, December 31, 1972, and December 31, 1973. As a result of a field audit covering these tax periods, four notices of deficiency, all dated February 15, 1978, were issued imposing additional franchise taxes of \$4,967.27 plus interest, \$2,904.39 plus interest, \$3,780.63 plus interest, and \$3,744.27 plus interest for 1970, 1971, 1972, and 1973, respectively. Petitioner timely filed a petition for redetermination of these deficiencies.

3. The notices of deficiency are based upon increases in the property allocation factors for each of the tax years. The percentages for the property allocation factors for 1970, 1971, 1972 and 1973 on agreed issues between Martin Marietta and the Audit Division are 3.2399%, 3.3137%, 3.3250% and 3.3683%, respectively; however, the Audit Division based deficiencies on percentages of 3.5474%, 3.4609%, 3.5041% and 3.5493%, respectively.

4. The Field Audit Report dated August 31, 1977 justifies the increased property factors as follows:

"Inventories included in "Property Everywhere" have been reduced to the extent of "average progress payments" received under the terms of contracts with the United States. The underlying reasoning to the reduction of inventory is that title to this property passes to and is vested in the United States rather than the taxpayer..."

5. Marin Marietta conceded in its petition that "(B)are legal title passe(d) to the customer (the United States) upon receipt of the progress payment...". However, petitioner contends that it retained economic and beneficial ownership of the inventory since it bore the risk of loss in the event of destruction of

its work, and it was responsible for the maintenance and security of the inventory until shipped to the customers.

6. Petitioner also contends that since it reported sales under the completed contract method (i.e. sales were not reported as income until goods were delivered to customers), it is consistent to include "total inventory in our property factor for apportionment purposes, without deduction for progress payments received from customers...". It should be noted that in calculating the receipts factor, the Audit Division, according to the Field Audit Report, included "total receipts from cost plus fixed-fee contracts with the Federal government...pursuant to directives from the Albany office".

#### CONCLUSIONS OF LAW

A. That pursuant to Tax Law section 210.1, the corporate franchise tax is calculated on one of four alternative bases, the first being the portion of the taxpayer's entire net income allocated to New York which is ascertained by multiplying business income by a business allocation percentage, and investment income by an investment allocation percentage, and adding the two products.

B. That pursuant to Tax Law section 210.3, the business allocation percentage is derived by means of a three-factor formula using the ratios of property, receipts and payroll within and without New York. The property factor is determined by "ascertaining the percentage which the average value of the taxpayer's real and tangible personal property within the state during the period covered by its report bears to the average value of all the taxpayer's real and tangible personal property wherever situated during such period...". Tax Law section 210.3(a)(1).

C. That the regulations effective during the year at issue, 20 NYCRR section 4.13(a), provided as follows:

"The percentage of the taxpayer's real and tangible personal property within New York is determined by dividing the average fair market value of such property within New York (without deduction of any encumbrances) by the average fair market value of all such property within and without New York..."

D. That 20 NYCRR section 4-6.3, though effective for tax years beginning on or after January 1, 1976, reflects the codification of prior Tax Commission policy and provides, in part, as follows:

"The terms of the (government) contract are used to determine when ownership of property has passed but, in the absence of a contract provision, property is treated as belonging to the taxpayer until shipment is made to the government. Property owned by the government may not be included in the property factor."

E. That the Audit Division properly excluded inventory from "Property Everywhere" to the extent of progress payments received by Martin Marietta under contracts with the United States since title to inventory passed to the United States as progress payments were received by petitioner.

F. That the petition of Martin Marietta Corporation is hereby denied and the four notices of deficiency issued February 15, 1978 are sustained.

DATED: Albany, New York

JAN 24 1983

STATE TAX COMMISSION

ACTING PRESIDENT

COMMISSIONER

COMMISSIONER